

REMARKS

A. Background

Claims 39-55 were pending in the application at the time of the Office Action. Claims 39, 40, 42, 47, 49, 53, and 54 were rejected as being anticipated by cited art. Claims 41, 43-46, 48, and 50-52 were objected to as being dependent upon a rejected base claim. Applicant has herein amended claim 39 and added claims 56 and 57. As such, claims 39-57 are presented for the Examiner's consideration in light of the following remarks.

B. Proposed Amendments

By this response, Applicant has amended the specification to address formal issues and to further clarify the invention. Specifically, paragraphs [0042] and [0050] have been amended to correct grammatical errors. Applicant has also amended claim 39 to resolve a potential antecedence problem. Applicant has added new claims 56 and 57. Applicant respectfully submits that the amendments to the specification and claims do not introduce new matter and entry thereof is respectfully requested.

C. Rejection on the Merits

Page 2 of the Office Action rejects claims 39, 40, 42, 47, 49, 53, and 54 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,929,155 to Sayers ("*Sayers*").¹ Applicant respectfully traverses this rejection.

¹ Because Sayers is only citable under 35 U.S.C. § 102(e), Applicant does not admit that Sayers is in fact prior art to the claimed invention but reserves the right to swear behind Sayers if necessary to remove it as a reference.

Applicant respectfully notes that a claim is anticipated under 35 U.S.C. § 102(a), (b), or (c) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. MPEP § 2131.

In rejecting the aforementioned claims, the Office Action simply alleges that “[t]he Sayers reference discloses a ‘collapsible bag’ (40, 140, 240) having a ‘port’ (41, 141, 241) and ‘select retention plates’ (57, 157, 257), as claimed. Further, the method would be inherent during normal use of the device.” Office Action, page 2.

As the foregoing makes clear, with the exception of three elements, the Office Action has failed to specifically identify which elements purportedly disclosed in *Sayers* that the Examiner believes correspond to the elements recited in the rejected claims. For example, Applicant notes that the Office Action has failed to identify, with any specificity whatsoever, which element(s) of *Sayers* is/are purported to correspond to:

- “a chamber,” “a bin,” “an opening,” “a floor,” and “a porthole,” as recited in claim 39; or
- “a bag assembly,” “a chamber,” “a bin,” “a fluid line,” “a first end,” “a second end,” “an opening,” “a floor,” and “a porthole,” as recited in claim 47; or
- “a bag assembly,” “a chamber,” “a bin,” “a fluid line,” “a first end,” “a second end,” “a slot,” “a doorway,” “a side wall,” and “a floor,” as recited in claim 53.

Furthermore, the Office Action has failed to specifically identify any steps or elements purportedly disclosed in *Sayers* that the Examiner believes correspond to the method steps recited in the rejected claims. For example, Applicant respectfully submits that the Office

Action has failed to identify, with any specificity whatsoever, which element(s) and step(s) of *Sayers* is/are purported to correspond to the claim steps:

- “positioning a collapsible bag within a chamber of a bin, the bag having a port projecting therefrom,”
- “positioning the port of the bag within an opening extending through a floor of the bin,” and
- “mounting a select retention plate to the bin after the bag is within the chamber so that the select retention plate covers at least a portion of the opening extending through the floor of the bin, the select retention plate at least partially bounding a porthole which comprises a portion of the opening in the floor, the port being disposed within the porthole,”

recited in independent claim 39; or.

- “positioning a bag assembly within a chamber of a bin, the bag assembly comprising a collapsible bag and a fluid line, the fluid line having a first end fluid coupled with the bag and an opposing second end,”
- “passing the second end of the fluid line through an opening extending through a floor of the bin,” and
- “mounting a select retention plate to the bin so that the select retention plate covers at least a portion of the opening extending through the floor of the bin, the select retention plate at least partially bounding a porthole which comprises a portion of the opening in the floor,”

recited in independent claim 47; or

- “positioning a collapsible bag of a bag assembly within a chamber of a bin, the bag assembly further comprising a fluid line having a first end fluid coupled with the bag and an opposing second end,”
- “passing a section of the fluid line through a slot formed on the bin such that the second end of the fluid line is disposed outside of the chamber, the slot being in communication with the chamber of the bin and extending from a doorway formed on a side wall of the bin to a floor of the bin,” and
- “mounting a retention plate to the bin so that the retention plate covers at least a portion of the slot,”

recited in independent claim 53. Thus, Applicant is left to guess at the position of the Office Action concerning the purported disclosure of *Sayers* with regard to the rejected claims. This much Applicant respectfully declines to do, at least because the Office Action bears the initial burden of establishing anticipation.

Instead of specifically identifying any steps or elements purportedly disclosed in *Sayers* that the Examiner believes correspond to the method steps recited in the rejected claims, the Office Action simply alleges that “the method [of the rejected claims] would be inherent during normal use of the [Sayers] device.” *Emphasis added.* As to the purported inherency of the aforementioned limitations, Applicant respectfully notes that inherency is not readily established.

For example, as noted in MPEP § 2112, the Office Action must provide rationale or evidence showing inherency. In particular, “The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” *In re Rijckaert*, 9 F.3d 1531, 1534 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (emphasis in original). Moreover, the Court of Appeals for the Federal Circuit has noted that

“To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described by the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a thing *may* result from a given set of circumstances is *not* sufficient.’” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ 2d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added).

Finally, “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex Parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

In light of the foregoing discussion, Applicant submits that the Office Action has not established the inherency of the above-referenced claim limitations and the rejection of the claims should accordingly be withdrawn.

Notwithstanding the deficiencies in the Office Action discussed above, Applicant further submits that the cited art does not disclose or suggest each and every element as set forth in each of the aforementioned claims. By way of example, Applicant submits that *Sayers* does not disclose or suggest, inherently or otherwise, “mounting a select retention plate to the bin after the bag is within the chamber” as recited in independent claim 39, or “mounting a select retention plate to the bin so that the select retention plate covers at least a portion of the opening extending through the floor of the bin, the select retention plate at least partially bounding a porthole which comprises a portion of the opening in the floor,” as recited in independent claim 47, or “passing a section of the fluid line through a slot formed on the bin such that the second end of the fluid line is disposed outside of the chamber, the slot being in communication with the chamber of the bin”

and extending from a doorway formed on a side wall of the bin to a floor of the bin” as recited in independent claim 53. Thus, independent claims 39, 47, and 53 are distinguished from *Sayers*. Claims 40, 42, 49, and 54 depend from claim 39, 47, or 53 and thus incorporate the limitations thereof. As such, applicant submits that claims 40, 42, 49, and 54 are also distinguished over *Sayers* for at least the same reasons as discussed above with regard to claims 39, 47, or 53.

In view of the foregoing, Applicant respectfully submits that the Office Action has failed to establish that *Sayers* anticipates claims 39, 40, 42, 47, 49, 53, and 54, at least because the Examiner has failed to establish that each and every element as set forth in each of the aforementioned claims is found in *Sayers*, because the Examiner has failed to establish that the identical invention is shown in *Sayers* in as complete detail as is contained in each of the aforementioned claims, and because the Examiner has not established that *Sayers* discloses the elements arranged as required by each of the aforementioned claims.

Applicant thus respectfully submits that the rejection of claims 39, 40, 42, 47, 49, 53, and 54 should accordingly be withdrawn.

D. Allowable Subject Matter

Page 3 of the Office Action objects to claims 41, 43-46, 48, and 50-52 as being dependent upon a rejected base claim, but states that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant declines to rewrite claims 41, 43-46, 48, and 50-52 in independent form at this time. Since the Office Action has failed to establish that *Sayers* anticipates claims 39 and 47, from which claims 41, 43-46, 48, and 50-52 depend, applicant submits that claims 41, 43-46, 48, and 50-52 are in condition for allowance.

No other objections or rejections are set forth in the Office Action.

E. Conclusion

Applicant notes that this response does not discuss every reason why the claims of the present application are distinguished over the cited art. Most notably, applicant submits that many if not all of the dependent claims are independently distinguishable over the cited art. Applicant has merely submitted those arguments which it considers sufficient to clearly distinguish the claims over the cited art.

In view of the foregoing, applicant respectfully requests the Examiner's reconsideration and allowance of claims 39-57 as amended and presented herein.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 29th day of September 2006.

Respectfully submitted,

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